Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of	)	
	)	
Implementation of Sections of the	)	
Cable Television Consumer Protection	)	MM Docket 92-266
and Competition Act of 1992	)	
	)	
Rate Regulation	)	

The League of California Cities, and those individual entities named hereinafter (see, Attachment "A") as co-filers, wish to enter into the record these comments regarding the Federal Communications Commission's Notice of Proposed Rulemaking that was released on December 24, 1992.

SUMMARY OF COMMENTS

The League encourages the Commission to provide rate rollback and refund authority to cities certified by the Commission to regulate the Basic Service Tier. Rate increases taken prior to the date of certification should not be immune from adjustment and/or reduction upon local certification, and refund or rebate authority should be granted. Certification revocation should be an extreme step, reserved only for those situations in which local regulations are plainly inconsistent with regulations of the Commission. The League strongly suggests that this Commission grant broad authority to franchising authorities to prohibit unfair rate discrimination within their boundaries, and to allow substantial deference to the rate regulating decisions of these authorities. The League suggests that additional outlets and ancillary equipment be included in Basic Service Rates. Finally, the League contends that the "line item" disclosure provisions of the Cable Act should be restricted to those items directly related to impositions imposed by the franchising authority.

TABLE OF CONTENTS

I.

INTRODUCTION

The League of California Cities (the "League") is a non-profit organization which provides information, education, and representation services to its members. Its membership consists of 469 California cities and the League is the primary professional organization for municipalities within the State of California. One of the League's major functions is to solicit input and advice from its member cities in regard to legislative and administrative proceedings affecting California cities and to provide collective input into the legislative and, on occasions, administrative process on behalf of its member cities. It is in this role that the League provides these comments to the Federal Communications Commission (the "Commission") in relation to the Commission's Notice of Proposed Rulemaking in the matter of implementation of sections of the Cable Television Consumer Protection and Competition Act of 1992 - Rate Regulation adopted by the Commission on December 10, 1992 and released December 24, 1992 (MM Docket 92-266) (the "NPRM").

This filing should be viewed as the collective input of the 469 California cities which are members of the League. The League sincerely hopes that the Commission gives serious consideration to the League's comments given the important contributions which California cities have made over the last decade in relation to the regulation of cable television.

The League supports the comments filed in this proceeding by the National Association of Telecommunication Officers and Advisors ("NATOA"), the National League of Cities ("NLC"), and the United States Conference of Mayors ("NCM"), and the National Association of Counties ("NAC") (collectively the "Local Government"). The comments filed by Local Government are generally reflective of the League's detailed analysis of the numerous issues raised in the NPRM. As opposed to rehashing the comments tendered by those groups in this matter, the League desires to focus on a number of issues which have been raised by one or more of its member cities and which, in the opinion of the League, are of critical importance to franchising authorities within the State of California.

The League has inquired of its own members to determine areas of specific concern in California and to provide the collective input and guidance of its member cities to the Commission in your difficult role of adopting regulations implementing Section 623 and 622(c) of the Communications Act of 1934, as amended by Sections 3, 9, and 14 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act").

II.

CALIFORNIA CITIES WILL REGULATE THE BASIC SERVICE TIER UPON ESTABLISHMENT AND IMPLEMENTATION OF THE CERTIFICATION PROCESS.

Rate regulation has long been a subject near and dear to the hearts of California cities. Subsequent to the adoption of the Cable Communications Policy Act of 1984 (the "1984 Cable Act"),

California municipalities were besieged with large, frequent, and in some cases potentially unjustified rate increases. The avalanche of system sales which incurred between 1984 and 1989 seemed to magnify the upward pressure upon already escalating rates.

Rate increases which outstripped inflation by a factor of three or four were the rule as opposed to the exception, and California cities were helpless to protect their citizens from rampaging cable rates which were often motivated by a desire to increase cash flow for the purposes of the next sale. In many cases the spiral of rising cable rates was a problem without a solution and consumers were being asked to bear the burden of rapidly escalating system values which were largely the result of Congress's decision to deregulate the industry in 1984.[1]

During the legislative process that culminated in the adoption of the 1992 Cable Act, California cities were vocal in their support of the return of rate regulation in some form or another. The League strongly supported the adoption of the 1992 Cable Act as did numerous of its member cities. It is the strong sentiment of the League that a recapture of rate regulation

---

[1] The First Amendment protects not only the interests of a speaker but those of the viewer as well. Since the complete deregulation of cable rates in 1986, rapid price increases have prevented many viewers from obtaining vital information via television. In particular, much of the programming available only on cable television, such as C-Span, is of a political nature. To the extent that this cable programming is denied citizens due to cost, then the First Amendment rights of these viewers are impaired. Consequently, any rate regulation program, for both the Basic Tier as well as Cable Programming Services, should be designed to insure the broadest reach of information possible.

authority was, in all probability, the single most important ingredient in the legislative equation from the standpoint of California cities.

In preparation of these comments, the League has surveyed its members to determine the level of interest for regulatory certification upon adoption of the Commission's final regulations in this area. A number of cities have expressed such a strong interest in this matter that they have joined into this filing as co-filers (the "Associated Entities").

To the extent that the Commission certification procedures are simple, clear, and straightforward, the Commission can expect a widespread response from California cities.

III.

SUBSTANTIVE COMMENTS RELATING TO RATE REGULATION

The League offers the following substantive comments to various components of the NPRM on behalf of itself and its members:

A. Rollback Authority.

The League encourages the Commission to provide rate rollback and refund authority to cities certified by the Commission to regulate the Basic Service Tier. The League has received numerous comments from its member cities regarding rate increases which have been implemented by cable operators within the past thirty to sixty days. Many of these rate increases have been accompanied by retiering announcements which have downgraded the number of signals offered on the lowest tier while, in many

cases, maintaining or even increasing the charges for the downsized tier.

At the time the Commission issued its NPRM in relation to the redefinition of Effective Competition pursuant to the 1984 Cable Act, (MM Docket No. 90-4, and No. 94-1296), numerous municipalities in California which arguably might not be subject to Effective Competition under the prior rules of this Commission were notified of either rate increases or tier service reductions, or both, in apparent anticipation of the Effective Date of this Commission's revised regulations.

In the opinion of the League, some cable operators capitalized upon this Commission's uncertainty as to its rollback authority to effectively circumvent the upgrade in the Effective Competition standard and minimized or even thwarted municipal regulation by simply increasing their rates prior to the Effective Date of the Commission's regulation. In its final regulations, this Commission determined that regulatory jurisdictions did not possess rollback authority and thus effectively rewarded those cable operators who imposed significant and perhaps unjustified rate increases simply to beat the Effective Date of this Commission's more stringent regulations.

The League strongly encourages this Commission not to reward aggressive cable operators who have hastened, and in some cases magnified, future rate increases in order to "beat the clock" of this Commission's final regulations. At a minimum, those rate increases taken between the Effective Date of the 1992 Cable Act

and city certification should not be immune from adjustment and/or reduction upon local certification and refund authority should be granted. Cable operators should not be able to manipulate its rate structure to thwart effective municipal regulation.

It should be clear that an otherwise unjustified rate should not be institutionalized simply due to the cable operators opportunistic timing decision. If rate regulation is to be meaningful and effective, municipalities should not be forced to accept inflated rate schedules which are in effect as of the date of this Commission's final regulations. Those rates should be subject to review and challenge as would be rates which are adopted subsequent to the effective date of this Commission's final regulations.

Congress expressed its collective outrage at the level of cable television rates in this land through its overwhelming adoption of Section 623 of the 1992 Cable Act. A pattern and practice of preregulation circumvention, by way of rate increases, retiering, or both, through anticipatory rate increases is clearly inconsistent with Congressional intent and violates the spirit behind Section 623 of the 1992 Cable Act.

Rollback authority should not necessarily be limited to rates which were in effect as of the Effective Date of the 1992 Cable Act. If Congress was content with the level of rates in effect at the time of enactment, it would have found no need to breath legislative life into the sweeping provisions of Section 623 of the 1992 Cable Act.

Rather, it is clear from a reading of both the 1992 Cable Act and its Legislative History that Congress intended to grant both this Commission and localities broad authority in establishing reasonable cable television rates and that cable operators should not, in essence, be guaranteed a floor rate no less than that in effect on the Effective Date of the 1992 Cable Act. Rather, this Commission, as well as the localities which implement its regulations, should possess the latitude to look both prospectively and retroactively at cable rates and not be bound by what potentially could be unreasonably high rates in effect at the time of the adoption of the 1992 Cable Act.

B. The Certification Procedure.

The League wholeheartedly supports the Commission's tentative conclusion that a franchising authority need submit only a standardized and simple form for certification purposes. The certification process should not act as a deterrent to the invocation of local rate regulation authority but rather should be designed to facilitate the obvious goal of Congress, that being the regulation of the Basic Service Tier at the franchising authority level. To the extent that the certification process is cumbersome or complicated, or effectively requires the retention of Washington, D.C. counsel, many smaller cities in California may well be deterred from seeking rate regulation authority.

The certification process should not be viewed as an adversary proceeding wherein a disgruntled cable operator can challenge the rate regulation decisions of a franchising authority prior to those decisions even being made. The

certification process, at least in the first instance, should be deemed relatively ministerial. A cable operator which essentially opposes rate regulation in any form should not be allowed to harass a municipality seeking certification through the initiation of an adversary proceeding before this Commission on the threshold matter of certification nor should the prospective decisions of a franchising authority be challengeable during the certification process. Rather, all that should be required is a simple prima facia showing by the franchising authority that it complies with the requirements of Section 623(a)(3) of the 1992 Cable Act and the declarations or certificates filed by the franchising authority in support of its certification petition should be granted great weight and deference.

California possesses a number of metropolitan "mega-systems" wherein one cable operator serves a number of different cities with essentially an integrated cable television system. In order to achieve economies of scale, particularly in the areas of billing, promotion, and maintenance, "mega-system" cable operators have blended their communities into one system and, at least in a non-regulated environment, treated all subscribers regardless of jurisdictional nexus the same.[2]

---

[2]The League is aware of several situations in California where a "mega-system" has treated subscribers the same even though the service provided was different. For example, in a regional rebuild which requires several years to complete, subscribers at the beginning of the rebuild may receive 50 or more channels whereas subscribers towards the end of the rebuild will maintain their reduced channel capacity for several years. Despite the fact that regional subscribers may receive significantly different levels of services, at least in terms of

Although there may be some marginal advantage to municipalities and subscribers through the regionalization of services, the primary benefit accrues to the cable operator who achieves, in many cases, significant savings and efficiencies through consolidation. The decision to treat different communities as one, which may or may not possess equal needs and subscriber patterns, is a business decision on the part of the cable operator. It is not legally mandated or even consented to by the host franchising authority.

To the extent that a cable operator has regionalized its cable system, a municipality seeking certification should not be strapped with some form of regional rate regulation in order to accommodate the business interests of the cable operator. There is neither express statutory authority in the 1992 Cable Act nor implied authority in the Legislative History for this Commission to condition certification upon some form of regional or joint regulation. In fact, the House Report states the contrary. (House Report, Report No. 102-628, pp. 80-81.)

This Commission's decision to certify or not should be totally and exclusively dependent upon the application filed by the petitioning franchising authority. To allow cable operators to oppose certification based upon a request for regional regulation pursuant to an existent or non-existent joints powers authority or other form of legal structure would simply

---

delivered channels, the League is aware of situations where the mega-system has charged a uniform rate to all of its subscribers scattered throughout several cities thus effectively penalizing those subscribers residing in communities at the tail end of the rebuild schedule.

complicate and confuse the regulatory process and provide cable operators with an opportunity to oppose otherwise meritorious certification petitions based on a claim of regionalism. If Congress wanted to establish regional regulatory bodies for the purposes of rate regulation, it could have certainly so declared.[3]

The decision to regulate rates should be viewed in the same vein as a franchising or refranchising decision, that being one to be made by the franchising authority consistent with the regulations adopted by this Commission.[4] Franchising authorities

---

[3] The regionalization of a cable operator's operations may not be irrelevant to the rate regulation decision but can be adequately considered by a franchising authority acting on its on behalf. To the extent that this Commission adopts a benchmark approach to regulation, it is extremely likely that a cable operator will possess sufficient latitude to equalize rates among all of its regional subscribers. Even if a cost of service approach is adopted, a uniform cost structure among numerous jurisdictions could certainly be cited by the operator in support of a uniform rate. However, this decision should only be made on an ad hoc basis after reviewing all relevant evidence. It is not a decision that should be effectively made at the level of certification but rather should be considered among other relevant evidence at the time of a specific rate increase application.

[4] Effective competition, or the lack thereof, should be measured and established on a franchise area basis as opposed to a system-wide basis in situations where a cable system serves multiple franchising authorities. Geographic and topological conditions can vary immensely among even contiguous franchising authorities. Likewise, the availability of unaffiliated multi-channel video programming distributors can, and often will, vary from city to city. Subscribers residing in a community adjacent to a city which itself is a multi-channel video programming distributor which offers video programs to at least fifty percent of its households should not be denied the benefits of local rate regulation based upon an accident of geography. As both a practical and theoretical matter, the smaller the measuring area the more accurate is the measurement. This Commission has recognized this principal when it modified its prior Effective Competition standard from measurement on a county-wide basis to a franchise area specific basis. (47 CFR 76:33) Again, given the

should be free to voluntarily band together to regulate but should not be required to do so.

The remedy of certification revocation should be viewed as extreme and only applied in instances where the local regulations are unambiguously inconsistent with the regulations of this Commission on their face or where there has been a consistent and repeated pattern of disregard of the regulations of this Commission by the franchising authority. The certification revocation process should be viewed as a extraordinary proceeding which can be invoked by a cable operator based simply upon dissatisfaction with a rate decision of a franchising authority.

This Commission should only address the most aggravated cases through the revocation process and lesser disputes should be resolved at the local level pursuant to the invocation of otherwise available judicial remedies. A cable operator should not be allowed to challenge a specific rate decision by filing a decertification petition with this Commission but rather should challenge the specific rate decision of the franchising authority based upon inconsistency with law or the regulations of this Commission.

C. Components of the Basic Service Tier Subject to Regulation.

Both the language of the 1992 Cable Act, as well as its Legislative History, provides authority to cable operators to

---

fact that regional cable systems are simply business inventions of the cable operator and possess no intrinsic relationship to any franchising structure, Effective Competition should be measured on a franchise area specific basis.

expand the Basic Service Tier subject to local regulation through the voluntary addition of non-mandated services. In this regard, Section 623 does not appear to be preemptive and should be interpreted to provide latitude to cable operators and franchising authorities to negotiate expansions of the regulated basic service tier from the minimums imposed by the 1992 Cable Act.

To the extent that a cable operator and a franchising authority enter into a voluntary agreement with mutual consideration in which the cable operator agrees to expand the composition of the Basic Service Tier subject to local regulation, such an agreement should be enforceable by its terms.[5] No public policy is violated by allowing a cable operator and its franchising authority to go beyond the minimum definition of the Basic Service Tier as provided in the 1992 Cable Act.[6] Likewise, to the extent that a cable operator and its franchising authority voluntarily agree that regulated basic

---

[5] The League concurs with the comments of Local Government that all tiers of service which include the local broadcast and PEG channels are "Basic Service Tier" subject to local regulation. Any service tiers(s) which must be purchased as a gateway to other service is a "Basic Service Tier" within the meaning of the 1992 Cable Act.

[6] Regardless of the content of the Basic Service Tier, franchising authority should be granted broad authority to require publication of its availability. Cable operators should not be allowed to create restricted Basic Service Tiers and then hide their existence from consumers thus effectively forcing consumers to purchase more expensive and unregulated tiers of service.

service can be provided on more than one tier, no public policy is offended by enforcing such an agreement.[7]

D. Pricing Uniformity.

After reviewing the 1992 Cable Act and its Legislative History, the League concludes that the requirement that cable operators have a rate structure that is uniform throughout the geographic area in which cable service is provided should be interpreted and measured on a franchise area basis as opposed to a system wide basis. (Senate Report, Report No. 102-92, p. 76) Just as multiple franchising authorities should not be required to equalize treatment of a mega system providing regional service, likewise a cable operator should not necessarily be required to treat multiple municipalities in the same manner. There may be legitimate differences between what might appear to be similarly situated franchising authorities which justify unequal rates. This decision can only be made on a case by case basis after reviewing the specific cost structures and demographic patterns existing in each franchising authority.

On the other hand, Section 623(d) appears to prohibit, as a matter of preemptive federal law, rate discrimination within the boundaries of a franchising authority. A number of California

---

[7] The 1992 Cable Act provides that the Basic Service Tier shall be the only tier subscribers are required to purchase in order to obtain additional services. The Commission has asked for comments concerning whether this amounts to a "basic buy-through requirement." To the contrary, there should be no requirement that consumers must buy-through the Basic Service Tier. In fact, in the many jurisdictions where off-air reception is excellent, the cable operator should be encouraged to offer customers the opportunity to buy services other than the Basic Service Tier.

cities have been plagued with cable operators which have price discriminated within a city between areas subject to overbuild competition and those in which the cable operator possessed a monopoly. Across-the-street neighbors residing within the same city have paid significantly different rates based upon the existence, or lack thereof, of a competing video provider and these situations have caused great concern to franchising authorities who have attempted to ensure equal treatment of all of their citizens.

The Congressional directive of equal rate treatment should be viewed as preemptive and override conflicting state law. Uniform pricing of cable services appears to be part and parcel of a national telecommunications policy and the League strongly suggests that this Commission implement regulations granting broad authority to franchising authorities to prohibit unfair rate discrimination within their boundaries.

On the other hand, the price discrimination provisions of the 1992 Cable Act should not be interpreted to prohibit the establishment of discounts for senior citizens and other economically disadvantaged groups. So long as discounts are equally available to all members of the benefited class, the League does not see such discounts as necessarily invidious or anti-competitive. Of course, discount programs regarding the Basic Service Tier should be subject to local regulation and thus require some form of governmental approval prior to implementation.

E. The Effect of Cable Systems Sales Upon Rate Regulation.

Congress expressed its concern with the proliferation of cable systems sales through the adoption of the anti-trafficking provisions of the 1992 Cable Act. (Section 617). A cable system sale, particularly if highly leveraged, can impose inflationary pressures upon rates through the creation of an appetite for an income stream to service the debt associated with the sale. In addition, under a cost of service approach to rate making cable system sales will typically result in a "step up" of the rate base if all or a portion of the goodwill associated with the transaction is includible in the rate base for the purposes of rate making.

To the extent that the buyer pays in excess of the fair market value of the hard assets contained in the cable system, or if the "goodwill" is compensation for the ability to extract monopoly profits and unrelated to potential operating efficiencies, that difference between asset value and the purchase price will ultimately be passed on to consumers by way of higher rates.

If this Commission adopts some form of cost of service regulation, either as a primary regulatory tool or a hybrid to be used in conjunction with a benchmark method of regulation, franchising authorities should be granted flexibility in dealing with system sales so that consumers are not forced to bear the entire burden of cable system sales. To the extent that a cable system sale results in no tangible benefits to subscribers by way of system improvements or service enhancements, one must question

the justification for forcing or allowing consumers to pay the price of that transaction. In most cases, the goodwill associated with the cable sale is primarily related to the monopoly status of the cable franchise. Every time a cable system is bought and sold, consumers are ultimately forced to pay a higher price for the privilege of buying cable service from a monopoly cable provider.

The League suggests that the Commission allow franchising authorities the flexibility to discount system purchase prices which were either unreasonably high or could not be justified by anything which the buyer might bring to the transaction.[8] Although the League offers no specific hard and fast rules in dealing with cable system sales, they clearly can have a significant impact on rates and should be carefully considered by the Commission in establishing its regulations on Basic Service rates.

F. Substantive and Procedural Guidelines for the Local Regulation of Basic Service Rates.

Rate regulation decisions made by franchising authorities should be governed by principles similar to these generally applicable to local government in exercising its legislative and administrative powers. First, the decision of the franchising authority should be granted great deference by a reviewing body and the franchising authority should be entitled to a presumption of correctness. In California, the regulation of cable

---

[8] The League is generally supportive of the benchmark method of regulation with adjustments to reflect local market conditions.

television rates constitute a legislative function (Orange County Cable Communications Co. v. City of San Clemente, 59 Cal.App.3d 165, 130 Cal.Rptr. 429 (1976).) and the standard of review is one of reasonableness and abuse of discretion. (Id.) The League would suggest that the Commission establish a review standard similar to that employed by California courts in reviewing cable television rate decisions.

If this Commission is not inclined to grant the degree of deference associated with a typical governmental legislative decision, the League would respectfully suggest that the governmental decision be granted deference and that it be sustained if "substantial evidence on the record" exists to justify the governmental decision. Rate regulatory decisions should be made in a due process consistent forum in which each side is entitled to present credible evidence and cross-examine witnesses before a fair tribunal of fact.

The League suggests rejection of any procedural alternative which allows a reviewing court or administrative body to simply insert its judgment in place of the legislative body's judgment absent a showing of abuse of discretion or at least a failure to present substantial evidence upon the record justifying the rate decision. To the extent that the franchising authority's decision falls within the zone of reasonableness, it should be accepted even if other equally plausible decisions could likewise be justified.

Local franchising authorities should be held to no higher a standard than would a state public utility commissions, or this

Commission itself, when making a decision of equal complexity and significance. Given the Congressional immunity from damages found in Section 635A of the 1992 Cable Act, a cable operator's remedy for an improper rate determination should be limited to prospective declaratory relief and a cable operator should not possess the opportunity to collect damages from a franchising authority which errors in making a rate determination decision.

Upon the filing of a rate increase application, the franchising authority should not be limited to simply approving or disapproving the rate schedule offered by the cable operator. In order to avoid a potentially endless cycle of submissions and rejections, the franchising authority should be granted authority whereby it can establish a maximum rate which may or may not be coterminous with the rate proposed by the operator. The operator would be entitled to price to the maximum rate established by the franchising authority and would not necessarily be bound by the exact rate set in the rate making proceeding. A rate regulation proceeding which limits the franchising authority to a simple veto of the cable operator's proposal is unduly restrictive and inconsistent with generally accepted practices of rate making established by the vast majority of public utility commissions in this nation.[9]

---

[9] The Commission has asked for comments concerning whether local rate regulation decisions should be reviewed through federal or state court, or through the Commission itself. The important principal here is that whenever a review procedure is used, it must be expeditious and cost-effective. Extended and expensive judicial review may present a serious obstacle for many small cities exercising rate regulation authority. Consequently, the League supports the suggestion of the Commission that alternative dispute resolution mechanisms should be considered.

G. The Establishment of Rates for Additional Outlets and Ancillary Equipment Necessary to Receive the Basic Service Tier.

The League is aware of instances in which cable operators have charged, at least in the perception of their franchising authorities, extremely high rates for the provision of additional outlets. In some cases, the League is aware of additional outlet charges which range from five to seven dollars per month per additional outlet. Likewise, many cable operators throughout the state require the use of some form of converter or decoder which renders remote controls upon even extremely sophisticated cable ready television set inoperative and thus requires the consumer to rent from the cable operator a remote in order to enjoy the advantages of remote control viewing. Again, the League is concerned that it has seen an escalation in the rates charged for these devices.

It is the League's position that additional outlets should be included within the single monthly rate established for the provision of the Basic Service Tier, after the payment of a one-time installation charge which allows the cable operator to recoup its cost of installation, or, in the alternative, a separate rate for the provision of an additional outlet should be limited to the cable operators through marginal cost for the provision of that service absent any allegation of overhead or

---

Possibly the Commission could have some hand in selecting a panel, or multiple regional panels, of arbitrators who could hear disputes following final action by the City Council. The decision made by the arbitrators could then be appealed directly to the Commission. In this fashion, there would be uniformity of decisions and a cost-effective and efficient procedure to rapidly resolve these disputes.

profit. Additional outlets should not be viewed as revenue sources but rather should be viewed as a component of Basic Service.

To the extent that a cable operator, either directly or indirectly, requires that cable ready television owners utilize some form of "black box" which disables the remote control feature of their television, that equipment should likewise either be included within the rate established for the Basic Service Tier for the first outlet, including the remote control, with equipment required for additional outlets to be charged at its true marginal cost, excluding an allocation for overhead and profit, pursuant to an amortization schedule approved by the franchising authority consistent with the regulations of this Commission. The League respectfully requests that this Commission views additional outlets and required ancillary equipment as essentially part of the Basic Service Tier and not allow them to become independent profit centers for the cable operator.

IV.

COMMENTS RELATING TO SUBSCRIBER BILL ITEMIZATION AS PROVIDED BY SECTION 622(c) OF THE 1992 CABLE ACT.

Section 622(c), as amended by the 1992 Cable Act, permits cable operators to itemize on each regular subscriber bill those direct and verifiable costs attributable to (1) franchise fees, (2) the support and use of public, educational, and governmental ("PEG") access channels, and (3) any other governmental

assessments on transactions between a cable operator and a subscriber.

If a cable operator chooses to itemize costs, it must do so in a manner consistent with the Commission's regulations implementing Section 623. Section 623 provides that rules governing basic cable service rates shall take into account "the reasonably and properly allocable portion" of amounts assessed as franchise fees, taxes and other governmental charges assessed on transactions between cable operators and subscribers, and any amount required to satisfy franchise requirements to support public, educational or governmental channels, or the use of such channels under a franchise. The League offers the following comments regarding implementation of Section 622(c).

Prior to the enactment of the 1992 Cable Act, cable operators in California commonly used, and often abused, the "line item" itemization authority provided by Section 622(c) of the 1984 Cable Act. In the view of the League, Section 622(c) constituted a <u>disclosure</u> provision of the 1984 Cable Act whereby cable operators were entitled to advise subscribers as to the portion of their monthly payment which were <u>directly</u> attributable to charges or costs imposed by the franchising authority pursuant to the franchising process. In fact, Section 622(c) became a commonly used device to impose disguised rate increases upon subscribers and reduce the payments otherwise due the franchising authority by way of a reduction of gross revenues for purposes of calculating the franchise fee.

Shortly after the adoption of the 1984 Cable Act, many California cable operators began to itemize that portion of the monthly bill directly attributable to payment of the franchise fee. The League does not dispute the propriety of this practice. However, as time progressed, some cable operators became more aggressive in their practices and attempted to pass through to subscribers as a line item numerous expenses associated with the provision of cable programming including copyright fees and taxes of general applicability including the generally applicable property tax imposed on all property owners in the State of California.

To the extent that Section 622(c) could be utilized to "line item" generally applicable property taxes which are totally unrelated to special taxes and fees imposed upon cable operators pursuant to the franchising process, it is logical to assume that the day will soon come when monthly bills will show itemizations for employee taxes, social security taxes, and generally applicable federal and state income taxes.

The legislative intent behind Section 622(c) of the 1984 Cable Act was to allow cable operators to disclose the "hidden taxes" that were imposed upon them and ultimately subscribers pursuant to the franchising process. Its parameters were intended to encompass only such items as the franchise fee and incremental costs associated with satisfying PEG commitments. Section 622(c) was neither intended nor designed to allow cable operators to shift political accountability for repeated rate increases by attempting to transfer the responsibility to

government pursuant to line item itemization. The expenses associated with operating a cable system are simply business expenses which must be factored into the pricing decision by the cable operator. Expenses now itemized by some cable operators in California which are not directly related to the payment of the franchise fee or the provision of PEG services should not be entitled to line item treatment pursuant to Section 622(c) of the Cable Act or be considered "add ons" for the purposes of rate determination.

In addition, in older systems, PEG capital costs have been amortized many years ago. Since each cable operator has already incorporated PEG capital costs into its existing rates, no provision should be allowed for itemization of these prior costs. Itemization should only be allowed only for capital costs incurred after adoption of the Commission's rate regulation rules.

Some California cable operators have taken the line item itemization authorized pursuant to Section 622(c) of the 1984 Cable Act one step further and attempted to utilize this provision of the 1984 Cable Act to reduce the payment of franchise fees. It has become a common practice for cable operators to reduce gross revenues collected by them by the amount of the franchisee fee, plus in some cases any other payments which were itemized pursuant to Section 622(c) on the theory that these items did not constitute payments to the cable operator but were simply charges imposed upon subscribers by